In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 751

CANNERY WORKERS UNION OF THE PACIFIC, AFFILIATED WITH THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The *per curiam* opinion of the court of appeals (Pet. App. 6) is reported at 396 F. 2d 955. The Board's decision and order (Pet. App. 12-29) are reported at 159 NLRB 843.

JURISDICTION

The judgment of the court of appeals (Pet. App. 7-9) was entered on August 22, 1968. The petition for a writ of certiorari was filed on November 18,

1968. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether petitioner Union violated Section 8(b)(1)(A) of the National Labor Relations Act by expelling an employee-member for having filed charges against the Union with the National Labor Relations Board without first exhausting his internal Union remedies.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151 *et seq.*) are set forth in Appendix A of the petition (pp. 1-5).

STATEMENT

Petitioner Union is the recognized bargaining representative of the packing employees in Southern California of Van Camp Sea Food Co., Inc. (R. 81; 10, 13, 67).[1] Thomas E. Ivey, a member of the Union since 1950, was employed by Van Camp, and was included in the unit represented by the Union (R. 81; 11, 14, 175). The Union's constitution and by-laws provide (R. 64):

> No member shall file any action in court or proceeding before any administrative agency against

[1] "R" refers to Vol. I of the record reproduced for the court below, which has been transmitted to this Court. The facts are undisputed, being based on the pleadings and a stipulation (R. 80).

> the Union * * * without having first invoked and exhausted the remedies provided by this Constitution and By-Laws * * * in conformity with this Section * * *. The foregoing requirement of exhaustion of remedies shall not be waived by the passage of time in any case except to the extent required by law.

In April 1962, Ivey filed unfair labor practice charges with the Regional Director of the National Labor Relations Board against the Union and against Van Camp and five other employers in the Southern California packing industry (R. 81; 3, 5, 67, 75). The charge against the Union alleged that it had violated its bargaining obligation under Section 8(b)(3) of the Act (Pet. App. 2) by agreeing to a new collective bargaining agreement with Van Camp and the other five employers six months in advance of the termination date of the existing agreement (R. 81; 5). The charge against the employers alleged that they had entered into the new collective bargaining agreement in order to influence an election of the Union's officials scheduled for May 1962, and to preclude a possibly different Union administration from negotiating a new collective bargaining agreement. That resulted, it was asserted, in assisting the Union in violation of Section 8(a)(2) of the Act (Pet. App. 1) and also in refusing to bargain in violation of Section 8(a)(5) (Pet. App. 2). It was further alleged that by "these and other acts the Employer [sic] has violated Section 8(a)(1) of the Act * * *" (R. 81; 3, 75). The Board's Regional Director refused to issue a complaint on the charges, and

Ivey did not appeal the matter to the Board's General Counsel (R. 81; 7, 67).

On June 12, 1962, members of the Union filed charges against Ivey with the Union administration, alleging that he had violated the Union's constitution and by-laws by: (1) filing the charge against the Union with the Board without first exhausting the internal remedies provided in the Union's constitution; (2) making an improper attempt to set aside a legal collective bargaining agreement of the Union by filing "false and unfounded * * * charges against the Union" with the Board; (3) interfering with and disrupting the established collective bargaining relationships between the Union and employees involved by filing "false and unfounded * * * charges" with the Board against both the Union and the employers; and (4) making false, defamatory and fraudulent statements concerning the Union and its collective bargaining activities (R. 81-82; 67-69). The Union served upon Ivey notice of the charges and of a scheduled hearing (R. 81-82; 69-70). Ivey did not appear at the hearing, and was tried *in absentia* (R. 81-82; 70-72). The Union's trial committee found him guilty of all charges, except (4) above, and recommended his expulsion from membership (R. 82; 74). At a subsequent meeting, the Union members adopted the recommendation and expelled Ivey (R. 82; 75). Ivey then filed the charge in the present proceeding with the Board, alleging that the Union had violated Section 8(b)(1)(A) of the Act by expelling him for filing the earlier charges, and a complaint issued (R. 80; 9, 10-11).

The Board, applying the principle first enunciated in *Local 138, Int'l Union of Operating Engineers (Charles S. Skura)*, 148 NLRB 679, determined that the Union violated Section 8(b)(1)(A) of the Act by expelling Ivey for filing unfair labor practice charges with the Board without having exhausted his intra-union remedies (Pet. App. 12-26). The Board ordered the Union to cease and desist from expelling members for filing charges with the Board; to reinstate Ivey to membership without loss of status; to reimburse him, with interest, for any expenses or losses suffered because of the absence of certain financial benefits during the period of expulsion; and to post appropriate notices (Pet. App. 26-30).

The court below, in a *per curiam* opinion, enforced the Board's order, on the authority of *National Labor Relations Board* v. *Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418 (Pet. App. 6).

ARGUMENT

The decision of the court of appeals is consistent with this Court's decision in *Shipbuilding Workers*, on which it relied, and does not conflict with any other decision. There is thus no occasion for further review.

1. In *Shipbuilding Workers*, this Court, approving the Board's *Skura* principle, held that the policy of keeping persons free from coercion against making complaints to the Board is so important in the functioning of the Act that a union violates Section 8(b)(1)(A) where it penalizes members for making such complaints without first exhausting internal union

remedies, "except and unless plainly internal affairs of the union are involved" (391 U.S. at 424).

Petitioner seeks to distinguish *Shipbuilding Workers* on the ground that, since the first charge there alleged that the union had caused job discrimination in violation of Section 8(b)(1)(A) and (2) of the Act, it was clear that the member was seeking to protect his Section 7 rights. Here, on the other hand, petitioner asserts, the matters complained of did not involve an alleged impairment of Ivey's Section 7 rights (Pet. App. 11-15). However, effectuation of the policies of the Act requires that an employee be as free of coercion in filing unfair labor practice charges relating to other sections of the Act as he is with respect to those involving Section 8(b)(1)(A) and (2). Moreover, although the charges filed by Ivey did not *in haec verba* allege that the Union had restrained or coerced him in the exercise of rights guaranteed by Section 7 of the Act, such an allegation was nonetheless implicit in his charges. Ivey in fact charged the employers and the Union with a scheme of illegal assistance and collusive bargaining, which resulted in saddling the employees with a contract which, absent such illegal action, their newly selected representatives might have rejected (*supra*, p. 3). It is settled that, where the employer and the union enter into a collective bargaining agreement in violation of Sections 8(a)(2) and 8(a)(5) of the Act, they interfere with the employees' Section 7 right to bargain collectively through representatives of their own choosing, or to refrain from such activity. *International Ladies'*

Garment Workers v. *National Labor Relations Board*, 366 U.S. 731, 737-738.[2]

2. Contrary to the Union's contention (Pet. App. 15-20) the decision of the court below does not conflict, "at least in principle," with *United Steelworkers of America (Richard C. Price)*, 154 NLRB 692, affirmed *sub nom. Price* v. *National Labor Relations Board*, 373 F. 2d 443 (C.A. 9), certiorari denied, 392 U.S. 904. In *Price*[3] the Board held that a union does not violate Section 8(b)(1)(A) of the Act by disciplining a member for filing with the Board a petition, under Section 9(c)(1)(A)(ii), to decertify his union as bargaining representative. As the Board explained here (Pet. App. 21-23), in the unfair labor practice charge situation the union is directly accused of having violated the Act, and it has no legitimate interest in blocking a prompt determination of its guilt or innocence of that charge by a public tribunal. In the decertification situation, on the other hand, no violation of the Act is directly involved, and to require the union to tolerate an active opponent within its ranks, who seeks to undermine its very existence, pre-

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[2] It should also be noted that here, as in *Shipbuilding Workers*, "a whole complex of public policy issues was raised by * * * [the member's] original charge. It implicated not only the union but the employer" (391 U.S. at 425). If Ivey had prevailed, a Board order would have been issued not only against the Union but also against the employers. The issues raised by Ivey's charges thus could not have been fully explored in an internal union proceeding, nor could such a proceeding have provided a remedy for the improper execution of the collective bargaining agreement charged by Ivey.

[3] See also *Tawas Tube Products, Inc.*, 151 NLRB 46.

sents a danger of disrupting the legitimate functioning of the union and of distorting the election results. The court below, which decided both *Price* and the instant case, agreed with the Board that the two situations are distinguishable (see 373 F. 2d at 447).

CONCLUSION

For the reasons stated, the petition for certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

HANS J. LEHMANN,
Attorney,
National Labor Relations Board.

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